

NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
PROCEEDINGS BEFORE THE DUE PROCESS HEARING OFFICER

DEBBIE and  
MELVYN JARAMILLO, parents,  
on behalf of J.J., Student  
Petitioners,

vs.

DPH 1314-11

ESPAÑOLA PUBLIC SCHOOLS  
Respondent.

RESOLUTION AGREEMENT

THIS RESOLUTION AGREEMENT is made and entered into pursuant to 34 C.F.R. § 300.510 by and among J. J. by his parents, Debbie and Melvyn Jaramillo, individually and on behalf of J. J. (collectively referred to as "PETITIONER"), and the Española Public Schools (collectively referred to as "RESPONDENT" or "EPS") in resolution of all claims between the parties under the Individuals with Disabilities Education Act through the Execution Date of this Agreement.

PETITIONER and RESPONDENT, desiring to resolve all claims under the Individuals with Disabilities Education Act (IDEA) through the Effective Date of this Agreement, agree to the following:

1. RESPONDENT agrees to contract with clinical psychologist, Dr. Diane Thompson, Ph.D., and speech and language pathologist, Kelley Kohls-McMillen, MA-CCC-SLP, (hereinafter "Evaluation Team") to conduct an on-site evaluation of J. J., and exchange of information with Parents, particularly in the areas of:
  - a. Present academic and functional skills;
  - b. Communication including Augmentative and Alternative Communication and to determine if American Sign Language (ASL) should be taught to J. J. in order to provide him with access to robust communication through fully developed language;
  - c. Need(s) for assistive technology including in the area of communication;
  - d. To conduct an on-site functional behavioral assessment (FBA) including an analysis of J. J. pattern of attempting to engage with peers through unwanted touch; and

- c. To review the campus locations and classroom sites to assist in identifying the appropriate campus location and classroom site(s) for implementing J [REDACTED] IEP for remainder of this school year and for next school year's placement in a kindergarten class for kindergarten.
2. PETITIONER agrees to consent, and hereby does consent to the release and exchange of confidential student information between the Evaluation Team and EPS that is protected by the Family Educational Rights and Privacy Act (FERPA).
3. RESPONDENT and PETITIONER agree to convene an Individualized Education Program (IEP) meeting within 20 school days of receiving the final evaluation report(s) unless extended to accommodate the schedules of the Evaluation Team or so that the meeting can be held at a mutually agreed on time and place. The purpose of the meeting will be to:
  - a. Review the results of the evaluation;
  - b. Review and revise the IEP as needed based on the results of the evaluation including developing meaningful goals, and providing all necessary services and supports and specialized instruction including in the area of communication and assistive technology;
  - c. Develop a behavior intervention plan (BIP) intended to reduce/extinguish Julius's pattern of attempting to engage with peers through unwanted touch; and
  - d. Determine the appropriate campus location and classroom site(s) for implementing J [REDACTED] IEP.
4. RESPONDENT agrees to contract with the Evaluation Team to participate in the IEP meeting, preferably in-person; and to include by telephone the Recombinant 8 Syndrome specialist referenced in Paragraph 11 below, if such specialist has been located before the date of the IEP meeting and is available to participate at the agreed upon time.
5. RESPONDENT agrees to document on the IEP and BIP developed pursuant to this Agreement that PETITIONER does not consent to the use of physical restraint. RESPONDENT agrees to document on future IEPs and BIPs that PETITIONER does not consent to use of physical restraint if requested by PETITIONER.
6. RESPONDENT agrees to provide all necessary assistive technology devices and services as specified in J [REDACTED] IEP developed pursuant to this Agreement. RESPONDENT agrees that all assistive technology devices delivered to J [REDACTED] will be in good working order and able to perform their intended functions. It is further understood and agreed that RESPONDENT will make available all necessary instruction for Parents to become

7. Pending completion of the reevaluation and IEP Team meeting to review the results of the reevaluation as set forth in Paragraph 3 above, RESPONDENT and PETITIONER agree to amend J[REDACTED] current IEP without a meeting pursuant to 34 C.F.R. § 300.324(a)(4)(i), and further agree that J[REDACTED] IEP as amended, if implemented consistent with these terms, constitutes a free appropriate public education during this interim period, as follows:

- a. change J[REDACTED] schedule and location of services beginning Monday, November 18, 2013, to double-session pre-kindergarten from 8:30 a.m. to 2:00 p.m. Monday-Thursday including lunch with peers, and no school on Fridays;
- b. change J[REDACTED] schedule of services beginning Monday, November 18, 2013, to include the related service of transportation on the school bus Monday-Thursday;
- c. use social story to orient J[REDACTED] to his new schedule of services;
- d. provide training by Christine Cane, CCC-SLP to all of J[REDACTED] direct service providers (teacher(s), educational assistant(s), and ancillary service providers) in 20 signs to be used across settings by all service providers when communicating with J[REDACTED] in order to build and reinforce J[REDACTED] use of language;
- e. provide training, which will also be shared with Parents, by Cathy Vigil Martinez, CCC-SLP, J[REDACTED] SLP and Robert Quintana, Española Public Schools assistive technology consultant or his assistant Sarah Balkey, in the use of the I-Pad to be used across settings by all staff to develop J[REDACTED] expressive language skills;
- f. provide training of J[REDACTED] educational assistant(s) in diapering, hygiene care and continuous supervision during movement through school to ensure safety, particularly for all walking outside the classroom when J[REDACTED] should be held by the hand;
- g. use a daily log between home and school to communicate with Parents and record J[REDACTED] daily schedule and activities, as well as identification of the introduction of new materials/skills; the log will also include oxygen levels, eating habits, bowel movements and general information as called for by J[REDACTED] current IEP; and
- h. ensure that J[REDACTED] eats lunch at a table with his peers.

8. PETITIONER agrees to permit J [REDACTED] to ride the school bus which will be staffed with a bus driver who is already trained in CPR/First Aide, and with an adult aide who will be trained by December 20, 2013 in CPR/First Aide and further trained and supported to monitor J [REDACTED] safety and appropriately respond to his needs. The parties agree that the morning school bus ride is in J [REDACTED] best interest. However, if after a reasonable trial period, PETITIONER elects in writing to the Director of Special Education to transport J [REDACTED] either in the a.m. or p.m., RESPONDENT agrees to reimburse PETITIONER mileage according to EPS's approved rate to transport J [REDACTED] for the remainder of the 2013-2014 school year. RESPONDENT further agrees to reimburse PETITIONER mileage according to EPS's approved rate for transportation of J [REDACTED] by PETITIONER (a) to and from Los Niños Elementary School during his extended school year (ESY) in the summer of 2013 for the days that J [REDACTED] was transported by his Parents; and (b) to and from Los Niños Elementary School for the days that J [REDACTED] was transported by his Parents from the beginning of this school year until such time as RESPONDENT makes available bus transportation pursuant to this Agreement. PETITIONER agrees to complete any EPS required forms in order to receive such reimbursement.
9. RESPONDENT agrees that pending completion of the reevaluation and IEP Team meeting to review the results of the reevaluation, the occupational therapy interns will not work with J [REDACTED]
10. RESPONDENT agrees to provide cardiopulmonary resuscitation (CPR) and first aid training to all of J [REDACTED] direct service providers (teacher(s), educational assistant(s), and ancillary service providers) before winter break. RESPONDENT further agrees to inform PETITIONER of the date and time of the training so that they may attend.
11. RESPONDENT agrees to seek to consult with a specialist at UNM CDD, or another appropriate professional with knowledge of and expertise in Recombinant 8 Syndrome on a monthly basis for the next 12 months in order to assure implementation of J [REDACTED] IEP in a manner that is consistent with current research and clinical expertise concerning strategic and effective learning and communication interventions for children with Recombinant 8 Syndrome. PETITIONER agrees to provide name(s) and contact information of consultant(s) who may fulfill the terms of this Paragraph. PETITIONER agrees to consent to the release and exchange of confidential information between EPS and the consultant/consultant institution that is protected by the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability (HIPAA) as necessary to fulfill the terms of this Paragraph.
12. Recognizing that the Evaluation Team and Recombinant 8 Syndrome consultant are not employed by RESPONDENT to deliver the services described in this Agreement, PETITIONER agrees not to hold RESPONDENT responsible should any of these individuals be unable or unwilling to fulfill the activities specified in this Agreement.

RESPONDENT and PETITIONER agree to work together to adjust timeframes or identify alternative providers as the circumstances warrant.

13. RESPONDENT agrees to take appropriate steps to ensure consistent provision of related services including by making adjustments in contracting with or scheduling of related services providers as needed for the provision of a FAPE to J[REDACTED]. RESPONDENT agrees to have pullout related service providers consult with J[REDACTED] teacher and Parents when setting up a schedule for related services and that such schedule shall aim to minimize classroom absence during J[REDACTED] favorite activities. RESPONDENT agrees that pullout related services shall be delivered according to a predictable routine schedule, and that classroom staff and related service staff shall collaborate weekly as needed to exchange information, plan and assess the provision of education to J[REDACTED].
14. RESPONDENT agrees to take appropriate steps to ensure that J[REDACTED] is provided with continuous supervision by a trained Educational Assistant during the remainder of the 2013-2014 school year as called for in J[REDACTED] IEP. RESPONDENT further agrees to conduct all necessary planning and take appropriate steps for the recruitment, hiring, and retention of a trained Educational Assistant on the first day of the 2014-15 school year and continuing to the extent called for in J[REDACTED] IEP.
15. PETITIONER agrees to release, and does hereby release, RESPONDENT Española Public Schools, including their officials, employees, officers and agents, from any and all claims under the Individuals with Disabilities Education Act (IDEA) including but not limited to any claims for independent evaluations, reimbursement and attorneys' fees, arising from any acts or omissions of RESPONDENT through the effective date of this Agreement.
16. This Resolution Agreement shall not be construed as an admission of liability or of any wrongful act or omission by any party, such liability and wrongdoing being expressly denied by RESPONDENT. Rather, PETITIONER and RESPONDENT mutually acknowledge and represent that this is a compromise in resolution of disputed IDEA claims.
17. Within 30 calendar days of the effective date of this Agreement, RESPONDENT agrees to pay the lump sum amount of Seven Thousand Seven Hundred and Ninety Seven Dollars and 33/100 (\$7,797.33) in attorneys' fees for the full release of all PETITIONER's IDEA claims, the sufficiency of which is hereby acknowledged. Payment of said amount shall be made by instrument made payable to Steven Granberg Attorney at Law, PA.
18. PETITIONER agrees to dismiss with prejudice the Proceeding now pending before an independent due process hearing officer for the State of New Mexico, Docket No. 1314-11, within 24 hours from the Effective Date of this Agreement.

19. RESPONDENT and PETITIONER agree to waive the three business day opportunity to void this Agreement, and further agree that this Agreement becomes effective as of the Execution Date indicated below.

20. RESPONDENT and PETITIONER understand that this Agreement is binding and enforceable in any State court of competent jurisdiction or in a district court of the United States pursuant to 34 C.F.R. § 300.510(d)(2).

IN WITNESS WHEREOF, the parties have executed this Agreement, to be effective upon the Execution Date below.

Date Signed: November 20, 2013  
("Execution Date" and "Effective Date")

Signatures:

Debbie Jaramillo  
Debbie Jaramillo, individually and  
On behalf of Julius Jaramillo

Christina C. Baca  
Representative of Española Public  
Schools with Decision-Making Authority  
On behalf of Española Public Schools

Melvyn Jaramillo  
Melvyn Jaramillo, individually and  
On behalf of J [redacted]

APPROVED AS TO FORM AND CONTENT:

[Signature]  
ATTORNEY FOR PETITIONER

Elena Salazar with permission JR  
ATTORNEY FOR RESPONDENT